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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,805	08/30/2001	Serge Restle	05725.0927	6749
22852	7590	10/02/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER SOROUSH, LAYLA	
			ART UNIT	PAPER NUMBER
			1617	
			MAIL DATE	DELIVERY MODE
			10/02/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/890,805

**Applicant(s)**

RESTLE ET AL.

**Examiner**

LAYLA SOROUSH

**Art Unit**

1617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24, 27-49 and 51-76 is/are pending in the application.
- 4a) Of the above claim(s) 27-33, 38-48, 52-73, 76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24, 34-37, 49, 51, 74 and 75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

The response filed July 1, 2008 presents remarks and arguments submitted to the office action mailed December 27, 2007 is acknowledged.

Applicant's arguments over the 35 U.S.C. 102(b) rejection of claims 24, 34-37, 49, 51 and 74-75 over Birtwistle et al. (US Patent No. 5139781) is persuasive. Therefore, the rejection is herewith withdrawn.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 49 and 51 over Birtwistle et al. (US Patent No. 5139781) is persuasive. Therefore, the rejection is herewith withdrawn.

Upon further consideration of the claims, the following new rejections have been made:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1617

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 24, 34-37, 49, 51 and 74-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeer (US 5880076 A).

Vermeer exemplifies a Shower Gel comprising Sodium Coconut Isethionate in 5-10 wt%, Sodium Ether Lauryl Sulfate 2-5 wt%, Glycacarbamate, Glycaurea or mixtures thereof (nonionic) 1-45 wt%, Coconutamidopropyl betaine 8-15 wt%, Ethyleneglycol Distearate (nonionic) 4-10 wt%, isopropyl palmitate (hair conditioning agent and emulsifiers/emollients (refatting agents) or dispersants useful in the personal product and detergent compositions) 0.5-1 wt%, Moisturizer 0.2-1 wt%, Preservative 0.05-0.1 wt%, Sodium Chloride 1-5 wt%, Water and Optional Ingredients to Balance.

The compositions of Vermeer are useful as mild cleansing, opacifying/pearlescent or suspending agents for personal product compositions and improved detergency on oily soils and stains.

Art Unit: 1617

Although, Vermeer teaches the hair conditioning agents at about 0% to about 10%, preferably from about 0% to about 8%, even more preferably from about 0% to about 6% by weight of the composition and the emulsifier or emollient are from about 0% to about 10% by weight of the composition, Vermeer fails to teach the specific amount of 1.2% to 8% or 1.5 to 8% of the ester as recited in claims 24 and 51.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dose range of Vermeer's compound by routine experimentation (see 2144.05 11). The motivation to optimize the dose range of the Vermeer's final formulation is because one would have had reasonable expectation of success in achieving an optimal hair conditioning and emulsifying or dispersment properties useful in the personal product composition.

### ***Response to Arguments***

Applicant's arguments filed July 1, 2008 with respect to the Bristwistle rejection have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

Art Unit: 1617

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617